

to retaliate against Mr. Mozrall for his union activity, protected by RSA 273-A and to intimidate him from further engaging in such protective activities."

"Complaint further states that on or about May 23, Mr. Mozrall's first formal evaluation, he had never previously in over twenty (20) years of service received an overall unfavorable evaluation. The unfavorable evaluation occurred because of his union activity, demonstrated previously in the two (2) prior unfair labor practice charges filed by Mr. Mozrall."

Another complaint, on or about May 24, 1990, was that Sgt. Mozrall was transferred from the SWAT team to headquarters and removed as Assistant Troop Commander; that on May 24 until July 24, 1990 the Division engaged in a harassing investigation that revealed Sgt. Mozrall had violated the rules of the Division and which they alleged was obvious that the Division was singling him out for his union activities.

The unfair labor practice charge stated that the N.H. Division of State Police violated the rights of SEA and Mr. Mozrall under RSA 273-A:5 (a), (b), (c), (d), (g) and (h) and alleged that there were no other remedy available to them except to file an unfair labor practice with the Public Employee Labor Relation Board and that Mr. Mozrall had filed a complaint with the Personnel Appeals Board in accordance with the CBA grievance procedure.

The relief requested was an order to Cease and Desist harassing and singling out Mr. Mozrall; an order transferring Mr. Mozrall back to the SWAT team and to his Assistant Troop Commander position; and order the poor evaluation removed from his personnel file.

The Division of State Police by the Manager of Employee Relations for the State answered the complaint as follows;

"denied that the evaluation was a result of union activities. The State admitted that the transfer referred to in the complaint was accomplished, but was not accomplished because of any union activity."

As for the internal investigation regarding a leave approval, the Division of State Police indicated that a finding of the investigation was that he had approved his own leave, which appears to be operating outside of the Rules and Regulations of the State Police Division. The State further answered that the State Police Division did not take any disciplinary action against Mr. Mozrall as a result of the investigation despite the finding of a violation of the Rules and Regulations of the Department.

Along with the State's reply to the unfair labor practice charge, the Division of State Police by its representative Thomas F. Manning, Manager of Employee Relations of the State of New Hampshire filed a Motion to Dismiss the complaint on the basis of; (1) that the charges are based on the same alleged union activities and the same alleged patterns of retaliation

that this Board has previously rejected; (2) the substance of the complaint is comprised of legitimate administrative activities in which caused no harm to Mr. Mozrall and do not rise to a level worthy of the Board's consideration; (3) the complainant has administrative remedies available to him under the Rules of the Division of Personnel except for the matter of his poor evaluation. The evaluation appeals process having been negotiated away by the Association in the last round of negotiations.

SEA by its counsel, Attorney Reynolds, answered by stating that the Motion to Dismiss was inappropriate and that it was the complainant's position that the Motion for Dismissal must be seen as frivolous, made in bad faith, and that the complainant had a right to exercise his prerogatives under 273-A.

Hearing in this matter was held on May 16, 1991 at the office of the PELRB in Concord, New Hampshire.

At the beginning of the hearing all parties were afforded the opportunity to challenge any member of the board sitting at the time of the hearing. No challenge was offered.

The Manager of Employee Relations for the State representing the Division of State Police in opening statements said there were three issues before the Board; (1) the matter of the evaluation given Sgt. Mozrall; (2) his relief from duty on the SWAT team and transfer and his relief from Assistant Troop Commander position; and (3) whether the leave was granted in accordance with the Rules and Regulations of the Department of State Police. The Motion to Dismiss filed by the Division of State Police was accepted without ruling as PELRB wanted to listen to all the facts prior to ruling on the Motion.

Attorney Reynolds for SEA and Sgt. Mozrall indicated that he had called several witnesses which would probably not testify because of an internal investigation but were available in the event that they might be needed.

Attorney Reynolds declined opening statements and PELRB proceeded with the hearing.

The parties stipulated that the date of the occurrences referred to in the complaint concerning the leave questions occurred between May and July of 1990. The evaluation was for the period of 1990 and the transfer from SWAT also occurred in 1990.

Sgt. Brandon Flanders as a witness testified as to the procedures followed by the department dealing with leave and the methods of leave approval at the various levels of the command. He testified that in one instance Sgt. Mozrall approved his own leave as no immediate supervisor was immediately available, but could have been reached on the firing range.

Sgt. Mozrall testified as the procedures followed granting the leave, annual leave was taken by Sgt. Mozrall which was approved by himself because his supervisor was out on the range and not reachable at the time and that he signed his own leave, which apparently is contrary to the Rules and Procedure but testimony indicated that it had been done on prior occasions. As a result of this leave procedure, Sgt. Mozrall was issued a letter indicating a violation of the regulations was considered AWOL as the procedure had not been followed. However, testimony revealed that no warning had been issued for this offense.

Sgt. Mozrall testified as to the actions taken by his transfer out of the SWAT team and his subsequent transfer from Troop C as Assistant Commander. Sgt. Mozrall further testified as to the circumstances surrounding the evaluation which he received on May 23 from his immediate supervisor. The evaluation was conducted on May 15, it went into detail as to why the evaluation was not up to standard. Sgt. Mozrall also testified as to all of the circumstances surrounding the issue of leave taken by him without approval of his supervisor and that this was the first poor evaluation he had received in his many years on the State Police Force.

Lt. Gary Sloper who is Troop C Commander and has been Troop Commander since February 1990 testified as to his evaluation of Mozrall and to his conclusion about evaluation and feeling that it was fair and equitable.

Major Kennedy testified as to the Department's leave procedure and what had transpired in this specific case indicating that Sgt. Mozrall had taken annual leave without proper approval; the transfer and his re-assignment, action which was within management's rights, under 273-A: XI and indicated that on May 24, Colonel of the State Police decided to remove and transfer Mozrall from the Troop into another division of the state police. Further testimony was offered as to the reasons for the transfer, office conferences held and that the reason for the transfer was indicated to Sgt. Mozrall and referred in detail to Section 8 of the State Police rules with respect to the leave procedure and the CBA between the SEA and the State Police Unit. Evidence was introduced that Sgt. Mozrall disagreed with the statements in certain letters and his evaluation by Lt. Sloper (SEA Exhibit #1) introduced in evidence and issued by various levels of command in the State Police Department dealing with "Reports" weekly duty reports.

Attorney Reynolds in summation indicated that the question of leave was strictly in accordance with past practice which had been engaged in, in other instances in the State Police Division and felt that the one poor evaluation issue which was submitted in evidence marked (SEA Exhibit #1) which evaluation indicated less than acceptable ratings and the authorization of his own leave was in accordance with past practice.

FINDINGS OF FACT

1. The three (3) issues before the PELRB in this case are as follows:
 - (A). Reassignment and transfer of Mr. Mozrall from his position as Assistant Troop Commander.
 - (B). Whether the evaluation given Mr. Mozrall by Sgt. Sloper was proper.
 - (C). Whether Mr. Mozrall was denied a promotion because of his alleged union activity and evaluation.
2. Testimony at the hearing indicated that the subjects of evaluation, transfers and promotions are subjects currently before the Personnel Appeals Board. PELRB declines to rule on this subject as not within its jurisdiction.
3. The transfer and position assignment are clearly the prerogative of management as set forth in 273-A:I (XI).

4. The alleged infraction of the rules of the Department dealing with authority of leave taking and did not result in a warning or disciplinary action against Mr. Mozrall, even though technically a violation of Department rule, past practice indicated in one instance leave had been authorized by oneself.
5. Counsel for Mr. Mozrall attempted to portray the actions by the Department in all of the above complainant's allegations as being motivated because of union activities, but we find them circumstantial at best and lacking definite specific facts to support the allegations.
6. While it may appear to the complainant the Department's actions are harassing in nature, no evidence was offered that there was intent to harass or that transfer was motivated by any punitive intent.

ORDER

The State of New Hampshire, Division of State Police, Motion to Dismiss the complaint is hereby GRANTED.

Signed this 30th day of September, 1991.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.